

EXHIBIT A

SEP-10-2009 11:32

Stutman Treister & Glatt

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SECOND DISTRICT COURT

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COPY

IN THE SECOND JUDICIAL DISTRICT COURT FOR DAVIS COUNTY
 STATE OF UTAH

EZRA K. NILSON, SCOTT NELSON,
 LEONARD K. ARAVE, INDIVIDUALLY
 AND, AS APPLICABLE, AS TRUSTEES
 OF THE JESSICA NILSON TRUST, THE
 JOY NILSON TRUST, THE BENJAMIN
 EZRA NILSON TRUST, THE BRETT
 NILSON TRUST, THE ABBY NILSON
 TRUST, THE NELLIE JOE NILSON
 TRUST, AND JOHN DOES 1-50,

Plaintiffs.

vs.

JPMORGAN CHASE BANK, N.A.,
 INDIVIDUALLY AND AS

COMPLAINT FOR DECLARATORY
 RELIEF

Civil No. 070700622Judge Pace

JURY DEMANDED



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ADMINISTRATIVE AGENT, BANK OF)
 AMERICA, N.A., WACHOVIA BANK,)
 N.A., GUARANTY BANK,)
 WASHINGTON MUTUAL BANK, U.S.)
 BANK NATIONAL ASSOCIATION,)
 KEYBANK, N.A., REGIONS BANK,)
 BANK OF THE WEST, UNION BANK)
 OF CALIFORNIA, N.A., WELLS FARGO)
 BANK NATIONAL ASSOCIATION,)
 COMERICA BANK, SUNTRUST BANK,)
 COMPASS BANK, FIRST)
 COMMERCIAL BANK, NEW YORK)
 AGENCY, AND JANE DOES 1 - 50.)

Defendants.)

Plaintiffs Ezra K. Nilson, Scott Nelson and Leonard K. Arave, individually and, as applicable, as trustees of the Jessica Nilson Trust, the Joy Nilson Trust, the Benjamin Ezra Nilson Trust, the Brett Nilson Trust, the Abby Nilson Trust and the Nellie Joe Nilson Trust (collectively, "Named Plaintiffs"), aver as follows:

1. Named Plaintiffs are individuals and, to the extent applicable, trustees of the Trusts named herein who are parties to the Subordination Agreement, as identified below, that is the subject of this lawsuit. Plaintiff Ezra K. Nilson is a citizen of the State of Nevada, Plaintiffs Scott Nelson and Leonard K. Arave are citizens of the State of Utah, and Plaintiff Leonard K. Arave is a resident of Davis County.

2. Plaintiffs John Does 1 - 50 are other persons or entities with interests similar to Named Plaintiffs who have or may claim an interest which would be affected by the declaration sought in this action. They do not include any person or entity that is now the subject of a

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proceeding under Title 11 of the United States Code. John Does 1 - 50 may include certain beneficiaries of or successors in interest to certain of the Named Plaintiffs which are Trusts.

3. Defendants JPMorgan Chase Bank, N.A., individually and as Administrative Agent, Bank of America, N.A., Wachovia Bank, N.A., Guaranty Bank, Washington Mutual Bank, U.S. Bank National Association, KeyBank, N.A., Regions Bank, Bank of the West, Union Bank of California, N.A., Wells Fargo Bank National Association, Comerica Bank, SunTrust Bank, Compass Bank, and First Commercial Bank, New York Agency (collectively, "Named Banks"), are banks who are participants through Defendant JPMorgan Chase Bank, N.A. ("Defendant JPM") to the Subordination Agreement, as identified below, that is the subject of this lawsuit.

4. Defendants Jane Does 1 - 50 are others persons or entities with interests similar to Named Banks who have or may claim any interest which would be affected by the declaration sought in this action. They do not include any person or entity that is now the subject of a proceeding under Title 11 of the United States Code. John Does 1 - 50 may include successors in interest to certain of the Named Banks.

5. This Court has jurisdiction over the parties to and the subject matter of this Complaint pursuant to *Utah Code Annotated* §§ 78A-5-102 and 78B-6-401.

6. Venue is proper in this Court pursuant to *Utah Code Annotated* §§ 78B-3-307(1)(a) and (3).

7. Named Plaintiffs are signatories to that certain "Continuing Subordination and Standstill Agreement" ("Subordination Agreement") dated May 5, 2006. The Subordination

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Agreement is governed by Utah law, was executed by most of the parties in Utah, and was to be performed largely in Utah. Named Plaintiffs are identified as "Subordinated Lenders" under the Subordination Agreement. In some cases, Named Plaintiffs are signatories as trustees of certain trusts ("Trusts"). Named Plaintiffs are uncertain of the exact legal status of some of the Trusts, of the exact identity of certain beneficiaries or successors in interest to certain of the Trusts, or of the precise identity of all persons who have or may claim any interest similar to Named Plaintiffs which would be affected by the declaration sought in this action. Such persons are named herein as "John Doe" Plaintiffs 1-50. Named Plaintiffs will amend this Complaint to identify the John Doe Plaintiffs when the necessary information becomes known.

8. Defendant JPM is also a signatory to the Subordination Agreement. Defendant JPM purported to act for itself and as agent for the other Defendants with respect to the Subordination Agreement and the subjects of this litigation. Named Plaintiffs are uncertain of other banks or persons who may have or may claim any interest similar to the Named Banks which would be affected by the declaration sought in this action, and have named such parties herein as "Jane Doe" Defendants 1 - 50. Named Plaintiffs will amend this Complaint to identify the Jane Doe Defendants when the necessary information becomes known.

9. Significant controversies have arisen between Plaintiffs and Defendants under the Subordination Agreement. To the best of Named Plaintiffs' knowledge, Defendants' position with respect to Plaintiffs' obligations and liabilities under the Subordination Agreement is set out in a letter ("Demand Letter") from Richard S. Krumholz, Esq., dated September 3, 2009, a copy of which is attached as Exhibit "A."

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10. Named Plaintiffs deny that they are liable to Defendants under the Subordination Agreement in any amount and for any of the reasons claimed in the Demand Letter.

11. To the extent Named Plaintiffs can ascertain Defendants' contentions from the Demand Letter, Named Plaintiffs contend that the distributions in question were not covered by the Subordination Agreement at all. For example, the distributions were not on "Subordinated Debt" or made by "members of the Borrowing Group to [a] Subordinated Lender" under section 1(a) of the Subordination Agreement. Moreover, even assuming *arguendo* that such distributions were covered by the Subordination Agreement, they were "Permitted Payments" under section 2 of the Subordination Agreement, they were authorized by the Senior Lenders under section 1(a) of the Subordination Agreement, or Defendant JPM permitted the payments in question.

12. Named Plaintiffs deny that the facts alleged in the Demand Letter constitute a default under the Subordination Agreement. Named Plaintiffs further allege that the facts and circumstances cited in the Demand Letter were created by Defendant JPM itself, that Defendant JPM either negligently or fraudulently concealed its knowledge of these facts, and of its own creation of these facts, from Plaintiffs and other parties during their course of dealing, and that Defendant JPM's actions effectively prevented Plaintiffs from remedying any alleged default.

13. As a result of the foregoing, Named Plaintiffs allege that (a) Defendant JPM waived the claims it now makes; (b) because of Defendant JPM's actions and concealment of material facts, and Plaintiffs' reasonable reliance on the same, Defendants are estopped from

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asserting such claims; and (c) Defendant JPM breached the Subordination Agreement and the related covenant of good faith and fair dealing.

14. In all of these matters, Defendant JPM acted as agent for the other Defendants, as to which all of Plaintiffs' defenses to Defendants' claims apply.

15. The lack of further specificity as to Defendants' positions and claims in the Demand Letter prevents Named Plaintiffs from pleading with greater specificity the grounds for their denial of liability, their affirmative defenses or their related claims at this time. Named Plaintiffs will supply additional specific allegations as facts become known.

16. Named Plaintiffs believe that Defendant JPM's negligence and fraudulent concealment of facts give rise to affirmative claims for relief by Plaintiffs against Defendant JPM and, under the doctrine of *respondeat superior*, all of the Defendants. However, Named Plaintiffs cannot adequately plead such claims at this time. Named Plaintiffs reserve their rights to assert such claims and any other claims and, after sufficient discovery, will seek leave to amend this Complaint to plead such claims with greater specificity.

17. Plaintiffs have an interest in the Subordination Agreement, a written contract, and there is a current controversy between Plaintiffs and Defendants as to the parties' respective rights, obligations and liabilities thereunder. Pursuant to *Utah Code Ann. §§ 78B-6-401, et seq.*, Plaintiffs have a right to a declaration by this Court as to their legal obligations and rights under the Subordination Agreement.

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18. Named Plaintiffs respectfully ask this Court to resolve the significant controversies between the parties by declaring their respective rights and obligations under the Subordination Agreement, so as to fully resolve the controversies.

Jury Demand

Named Plaintiffs hereby demand trial by jury of all issues triable by jury.

Prayer for Relief

WHEREFORE, Named Plaintiffs hereby pray for declaratory relief for a determination of the rights and responsibilities of the parties under the Subordination Agreement, together with such other and supplemental relief as is appropriate, and for their costs of suit, attorneys' fees, and such other and further relief as is just and reasonable under the circumstances.

DATED this 9th day of September, 2009.



Ralph R. Mabey
Tony Castañares
Stephan M. Ray
Anthony Arnold
Stutman Treister & Glatt P.C.

Mark F. James
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Exhibit A

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September 3, 2009

**VIA FACSIMILE @ 310/228-5788
 AND CERTIFIED MAIL/RETURN RECEIPT**

TO: Ezra K. Nilson; Scott Nilson; Leonard K. Arave,
 Individually and as Trustee of the Jessica Nilson Trust,
 the Joy Nilson Trust, the Benjamin Ezra Nilson Trust,
 the Brett Nilson Trust, the Abby Nilson Trust and the
 Nellie Joe Nilson Trust

c/o Tony Castanera, as counsel for the above individuals
 and Leonard K. Arave, as Trustee
 Stutman, Treister & Glatt P.C.
 1901 Avenue of the Stars, Suite 1200
 Los Angeles, CA 90067

Dear Mr. Castanera:

We have been retained by JP Morgan Chase Bank, N.A. as Administrative Agent ("Administrative Agent") for the lenders ("Senior Lenders") under the Credit Agreement dated May 5, 2006 (the "Senior Credit Agreement"), to pursue the Senior Lenders' claims in connection with wrongful transfers and retention of funds from Pleasant Hill Investments, L.C. ("Pleasant Hill"), Woodside Group, Inc. ("Woodside") and various of their affiliated entities and subsidiaries (collectively, the "Borrowing Group") to each of the above-named individuals and trusts (collectively, the "Subordinated Lenders"). We are writing to you because you are counsel to the individual who is supposed to receive notice on behalf of the Subordinated Lenders. In this regard, we ask that you please forward this letter to all Subordinated Lenders.

The wrongful transfers at issue include wrongful distributions made to and accepted by the Subordinated Lenders in violation of the Continuing Subordination and Standstill Agreement ("Subordination Agreement"), also dated May 5, 2006. As a result of this conduct, the Subordinated Lenders are in breach of the Subordination Agreement and are liable to the Senior Lenders and Administrative Agent. In addition to breach of contract, the Subordinated Lenders also appear to be guilty of, among other things, conversion, negligent misrepresentation, and unjust enrichment, entitling Senior Lenders to actual and exemplary damages, attorneys' fees, and various equitable remedies including the imposition of constructive trusts, specific performance and injunctive relief.

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As you should know, under the Subordination Agreement all indebtedness and other obligations of every type and nature owed by members of the Borrowing Group to the Subordinated Lenders were subordinated to the payment obligations set forth in the Senior Credit Agreement. In fact, the Subordination Agreement only permits the Borrowing Group to make distributions to the Subordinated Lender, and for the Subordinated Lenders to accept such distributions, if the Borrowing Group is not in default of its obligations to the Senior Lenders under the Senior Credit Agreement. Specifically, Section 2 of the Subordination Agreement provides as follows:

2. **Restriction of Payment of Subordinated Debt, Disposition of Payments Received by Subordinated Lender.** The members of the Borrowing Group will not make, and Subordinated Lender will not accept or receive, any payment or benefit in cash or otherwise (or exercise any right of, or permit any set-off with respect to, the Subordinated Debt), directly or indirectly, on account of any amounts owing on the Subordinated Debt, provided, however, the members of the Borrowing Group may make, and Subordinated Lender may accept, Permitted Payments (hereinafter defined), if and only if at the time of each Permitted Payment and both before and after giving effect therein (a) no Default or Event of Default under the Senior Credit Agreement shall have occurred and be continuing, and (b) the members of the Borrowing Group will remain in compliance with the covenants set forth in Section 5.3 of the Senior Credit Agreement.

Despite the fact that Pleasant Hill was in default under the Senior Credit Agreement in January 2007, if not earlier, the Borrowing Group paid, distributed and otherwise transferred funds to the Subordinated Lenders in violation of this provision. As a result of these wrongful payments, the Subordinated Lenders were required to immediately pay and deliver all of the monies received in violation of Section 2 of the Subordination Agreement to Administrative Agent. Specifically, Section 3 of the Subordination Agreement provides as follows:

3. **Delivery of Payments.** In the event that notwithstanding this Agreement, any payment or distribution of assets of the members of the Borrowing Group or any of their Subsidiaries of any kind or character, whether in cash, property, or securities, from any source whatsoever shall be received by Subordinated Lender contrary to the provisions of this Agreement, such payment or distribution shall be held in trust for the benefit of and shall be immediately paid or delivered (with all necessary endorsements) by such holder to the Administrative Agent, for application to the payment or prepayment of all such Specified Senior Debt remaining unpaid, to the extent necessary to pay all such Specified Senior Debt in full in cash after giving effect to any other concurrent payment or distribution to the Senior Lenders.

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In this regard, Administrative Agent hereby demands that Subordinated Leader immediately deliver to Administrative Agent all records retained from the foregoing Group in violation of the Subordination Agreement. Alternatively, Administrative Agent hereby demands that the Subordinated Leader confirm that they are in possession of the full extent of the allegedly transferred records and agree to hold those records in trust without transferring, disseminating or otherwise disposing of or attempting those records. Finally, in the event the Subordinated Leader cannot comply with the above, Administrative Agent hereby demands that they file, without transferring, disseminating or otherwise disposing of or attempting any and all the records in an unsecured and including all the records made by the Borrowing Group to the Subordinated Leader in the Foreclosure, 2007.

Obviously, given the nature of the damages sought, this is of the essence. Accordingly, Administrative Agent asserts that the Subordinated Leader's response to this demand letter is late that was on Thursday, September 10, 2009, and that Administrative Agent is entitled to comply with the above terms, and to provide adequate immediate and complete compliance. Moreover, due to the imminent and irreparable harm to Administrative Agent's interests, Administrative Agent and the Senior Lender conclude that the wrongful conduct of the Subordinated Leader, being of the Subordinated Leader's failure to comply with the demands in this letter may require Administrative Agent to seek injunctive relief in order to prevent further harm.

Very truly yours,

Richard S. Glatt

Enclosure

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